

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Utility Consumers' Action Network,

Complainant,

vs.

SBC Communications, Inc. dba SBC Pacific  
Bell Telephone Company (U-1001-C) and  
related entities (collectively "SBC"),

Defendants.

Case 05-11-011  
(Filed November 14, 2005)

Utility Consumers' Action Network,

Complainant,

vs.

Cox California Telecom II, LLC, doing  
business as Cox Communications, and related  
entities (collectively "Cox"),

Defendants.

Case 05-11-012  
(Filed November 14, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING FINDING  
THE UTILITY CONSUMERS' ACTION NETWORK  
ELIGIBLE TO CLAIM INTERVENOR COMPENSATION**

**I. Summary**

A Notice of Intent (NOI) to claim intervenor compensation in these two proceedings was filed by the Utility Consumers' Action Network (UCAN) on

February 3, 2006. UCAN filed both of these proceedings. Although they involve similar allegations, the proceedings have not been consolidated although they will be coordinated for prehearing and hearing purposes. The NOI addresses UCAN's anticipated participation in both proceedings. No party opposes the NOI. UCAN is eligible to claim compensation pursuant to the requirements in Pub. Util. Code §§ 1801-1804.<sup>1</sup> However, a finding of eligibility for compensation does not guarantee an award of compensation.

## **II. NOI Requirements**

### **A. Timely Filing**

Pursuant to § 1804(a)(1), a customer who intends to seek an award of compensation shall, within 30 days after the Prehearing Conference (PHC) is held, file and serve an NOI on all parties to the proceeding. The PHC was held on January 4, 2006, and UCAN filed a timely NOI.

### **B. Customer Status**

Pursuant to Decision (D.) 98-04-059, this ruling must determine whether the intervenor is a customer, as defined in § 1802(b), and whether the intervenor is 1) a participant representing consumers, 2) a representative authorized by a customer, or 3) a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers.<sup>2</sup>

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<sup>1</sup> All statutory references are to the Pub. Util. Code.

<sup>2</sup> "When filing its Notice of Intent, a participant should state how it meets the definition of customer: as a *participant* representing consumers, as a *representative* authorized by a customer, or as a representative of a *group or organization* that is authorized by its

*Footnote continued on next page*

UCAN meets this requirement as it is an organization authorized by its articles of incorporation to represent the interests of residential customers, as defined in § 1802(b)(1)(C). The Commission has repeatedly determined that UCAN is a “customer” under the intervenor compensation statutes (*see, e.g.*, ALJ’s Ruling in Application (A.) 05-02-019).

### **C. Significant Financial Hardship**

Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in its NOI. Section 1802(g) defines “significant financial hardship”:

“Significant financial hardship” means either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding. Alternatively, the customer may make the required showing in the request for an award of compensation.

UCAN has made a showing of financial hardship in its NOI, based on a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), as the organization was found eligible in a another proceeding that commenced within one year of this proceeding (*see* Administrative Law Judge Ruling dated June 28,

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bylaws or articles of incorporation to represent the interests of residential customers.” D.98-04-059, *mimeo.* at 28-29 (emphasis in original).

2005, in Application 05-02-019). No party has attempted to rebut this presumption.

#### **D. Nature and Extent of Planned Participation**

Section 1804(a)(2)(A)(i) requires the NOI to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. UCAN filed these complaints against SBC Communications, Inc. and Cox California Telecom II and will likely be the sole plaintiff in both proceedings. UCAN's role is expected to include discovery, motion practice, settlement efforts, participation in evidentiary hearings, and post-hearing briefing.

#### **E. Itemized Estimate of Compensation**

Section 1804(a)(2)(A)(ii) requires that an NOI include an itemized estimate of the compensation the customer expects to receive. UCAN estimates a total projected budget of \$128,500 for these proceedings, as detailed below, based on proposed hourly rates it will support in its request for compensation.<sup>3</sup>

<b>Amount</b>	<b>Description</b>
\$60,000	200 hours of attorney Alan Mansfield's time at \$300/hour
\$15,000	50 hours of attorney and expert witness Michael Shames' time at \$300/hour
\$50,000	Fees for expert consultants
\$3,500	Incidental expenses
<b>\$128,500</b>	<b>Total</b>

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<sup>3</sup> The total set forth in the NOI (\$125,000) is incorrect, apparently due to arithmetic error. The actual total of the itemized expenses has been used in this ruling.

UCAN satisfactorily presented itemized estimates of the compensation it expects to request, although the Commission will require far more specificity in the costs when UCAN ultimately seeks compensation. Moreover, the number of hours and the hourly rates may be excessive and, as must any intervenor, UCAN must fully support its request for compensation, including the reasonableness of the hours spent and hourly rates.

**IT IS RULED** that:

1. The Utility Consumers' Action Network (UCAN) has met the eligibility requirements of Pub. Util. Code § 1804(a), including the requirement that it establish significant financial hardship, and UCAN is found eligible for compensation in these proceedings.
2. UCAN is a customer as that term is defined in § 1802(b) and is a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers.
3. A finding of eligibility in no way assures compensation.
4. When submitting its actual request for compensation, UCAN must fully support its request for compensation, including the reasonableness of the hours spent and hourly rates.

Dated February 27, 2006, at San Francisco, California.

/s/ JOHN E. THORSON

John E. Thorson  
Administrative Law Judge

### **CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Finding the Utility Consumers' Action Network Eligible to Claim Intervenor Compensation on all parties of record in this proceeding or its attorneys of record.

Dated February 27, 2006, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo

### **N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.